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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 HENRY SEAMAN d/b/a THE HENRY
10 APARTMENTS f/k/a THE HILLSIDE
PLACE APARTMENTS,

11 Plaintiff,

12 v.

13 STATE FARM FIRE & CASUALTY CO.,

14 Defendant.
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16

CASE NO. C06-1495JLR

ORDER

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18 **I. INTRODUCTION**

19 This matter comes before the court on cross motions for summary judgment from
20 Defendant State Farm Fire & Casualty Co. ("State Farm") and Plaintiff Henry Seaman
21 (Dkt. ## 11, 17). The court has considered the papers filed in support and opposition to
22 the motions. For the reasons stated below, the court DENIES Defendant's motion for
23 summary judgment (Dkt. # 11), and GRANTS Plaintiff's motion for partial summary
24 judgment (Dkt. # 17).
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II. BACKGROUND¹

Mr. Seaman owns an apartment building, “The Henry Apartments,” which he purchased from Russell Enterprises LLC (“Russell”), on or near May 31, 2002. State Farm issued Russell a property insurance policy, effective from April 1998 to January 2001 (the “Policy”). During the Policy period, the apartment building suffered physical damage from rot and decay that went undiscovered until 2004, approximately 2 years after Russell conveyed the property to Mr. Seaman.

In April 2006, Mr. Seaman notified Russell that he believed he had a claim against it based on a failure to disclose defects in the apartment structure. Mr. Seaman indicated that he would forego legal action in exchange for an assignment of Russell’s rights under the Policy. In May 2006, Russell executed an assignment. Mr. Seaman then submitted a claim under the Policy, which State Farm denied. Mr. Seaman filed this action seeking a declaratory judgment that the Policy entitles him to coverage pursuant to Russell’s assignment of rights.

III. ANALYSIS

Summary judgment is appropriate if the evidence, when viewed in the light most favorable to the non-moving party, demonstrates there is no genuine issue of material fact. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Galen v. County of Los Angeles, 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing there is no material factual dispute and he or she is entitled to prevail as a matter of law. Celotex, 477 U.S. at 323. The moving party can satisfy this burden in two ways: (1) by producing evidence that negates an essential element of the

¹For purposes of their cross motions, the parties stipulate to the following facts as set forth in their joint submissions. See Stipulated Facts (Dkt. # 12); Supplemental Stipulated Facts (Dkt. # 16).

1 non-moving party's case, or (2) after suitable discovery, by showing that the non-
2 moving party does not have enough evidence of an essential element to carry its burden
3 of persuasion at trial. Id. at 322-23; see also Nissan Fire & Marine Ins. Co., Ltd., v.
4 Fritz Cos., Inc., 210 F.3d 1099, 1106 (9th Cir. 2000). If the moving party meets its
5 burden, the opposing party must present evidence to support its claim or defense. Cline
6 v. Indust. Maint. Eng'g. & Contracting Co., 200 F.3d 1223, 1229 (9th Cir. 2000). For
7 purely legal questions, summary judgment is appropriate without deference to the non-
8 moving party.
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10 Here, the resolution of the parties' motions turns on the interpretation of an
11 insurance policy, which, under Washington law, is a purely legal question for the court.
12 See Overton v. Consol. Ins. Co., 38 P.3d 322, 325 (Wash. 2002). The court must give
13 the terms of a policy a "fair, reasonable, and sensible construction as would be given to
14 the contract by the average person purchasing insurance." Id. (internal quotation
15 omitted). The court construes terms within a policy as defined, while it assigns
16 undefined terms their ordinary meaning. Boeing Co. v. Aetna Cas. & Sur. Co., 784 P.2d
17 507, 511 (Wash. 1990).
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19 If the policy language on its face is fairly susceptible to two different but
20 reasonable interpretations, the court will apply the interpretation most favorable to the
21 insured. Allstate Ins. Co. v. Peasley, 932 P.2d 1244, 1246 (Wash. 1997); Allstate Ins.
22 Co. v. Hammonds, 865 P.2d 560, 562 (Wash. Ct. App. 1994) (reasoning that ambiguity
23 exists "when, reading the contract as a whole, two reasonable and fair interpretations are
24 possible"). A court must construe ambiguity against the insurer "even where the insurer
25 may have intended another meaning." Allstate Ins. Co., 865 P.2d at 562. Because
26 coverage exclusions "are contrary to the fundamental protective purpose of insurance,"
27 courts are to construe them strictly against the insurer and are not to extend them
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1 “beyond their clear and unequivocal meaning.” Stuart v. Am. States Ins. Co., 953 P.2d
2 462, 464 (Wash. 1998) (citation omitted).

3 The parties’ dispute centers on what constitutes a “loss” under the Policy. The
4 Policy provides, in pertinent part: “[w]hen a limit of insurance is shown in the
5 Declarations for Coverage A, we will pay for accidental direct physical loss to buildings
6 at the premises described in the Declarations caused by an insured loss.” Stipulated
7 Facts, Ex. A at 10. Mr. Seaman argues that a loss accrues at the time of physical
8 damage. He therefore contends that because the building suffered physical damage
9 during State Farm’s Policy period, he has a right to the coverage to which Russell would
10 have been entitled. State Farm counters that a loss is not physical damage, but resulting
11 financial harm. State Farm reasons that both now and at the time Russell assigned its
12 claim, Russell had already sold the property at a price that did not account for the
13 damage; thus, according to State Farm, Russell incurred no loss as a result of the
14 undiscovered damage. State Farm requests a declaration that Mr. Seaman can recover
15 nothing on Russell’s purported claim.
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18 The court concludes that, contrary to State Farm’s proposed construction, a loss
19 under the Policy accrues to the policyholder as soon as the underlying physical damage
20 occurs. The Policy covers “accidental direct physical loss to buildings at the premises . .
21 . .” Id. The Policy further provides that State Farm insures “accidental direct physical
22 loss to property covered under this policy unless the loss is [limited or excluded].” Id. at
23 14. This language equates loss with physical injury. Additional terms and conditions of
24 the Policy demonstrate that a loss occurs when the event causing damage occurs. For
25 example, the insured must give notice of a “loss” by providing a description of the “lost
26 or damaged property” – as opposed to the cost of repair or deduction in the selling price.
27 See id. at 26, ¶ 3.b. Further, the Policy’s list of exclusions characterize “loss” as the
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1 result of events causing physical injury, such as “earth movement” and “glass breakage.”
2 Id. at 14-15. According to the Policy’s “valuation” proviso, the insured is entitled to
3 benefits regardless of whether it pays to replace the property. Id. at 24, ¶ 2. There is
4 nothing in the Policy to suggest that the insured must first repair the property or
5 otherwise incur some financial detriment before accruing the right to recover.²
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7 The court further notes that its interpretation of the Policy is consistent with the
8 rationale of Ellis Court Apartments Ltd. v. State Farm Fire & Cas. Co., 72 P.2d 1086,
9 1090 (Wash. Ct. App. 2003). In Ellis, the Washington Court of Appeal held that loss
10 under the terms of a property insurance policy commenced at the time physical damage
11 occurred, not later, when damage was discovered. Id. The court relied on the absence
12 of language in the policy to condition or limit coverage to damage discovered before the
13 policy period’s expiration. Id. Moreover, this court held in Sirius v. Am. Ins. Co.,
14 under strikingly similar factual circumstances, that loss means physical injury, not
15 financial detriment. See No. 05-338, 2005 WL 1287965, at *3 (W.D. Wash. May 25,
16 2005) (holding that an insurer was liable to policyholder’s assignee for physical damage
17 following conveyance of property, notwithstanding the fact that the sale price did not
18 reflect a price reduction for damage).
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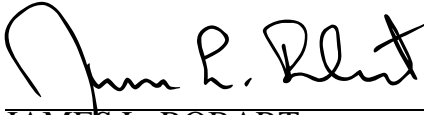
24 ²State Farm’s reliance on the “oft-stated principle” that property insurance is a personal
25 contract of indemnity is unavailing. See Def.’s Mot. at 5 (quoting Metro. Mortgage &
26 Securities Co., Inc. v. Reliable Ins. Co., 390 P.2d 694, 695 (Wash. 1964) for the proposition
27 that “a policy of fire insurance does not insure the property,” but indemnifies “the insured
28 against loss resulting from the destruction of, or damage to, his interest in that property”).
Here, it is undisputed that Russell must have suffered a loss to trigger coverage – i.e.,
indemnification. Rather, the parties’ dispute concerns how to define loss. As noted above, the
court looks to the plain language of the Policy in construing this term.

1 The court holds that the Policy provides that a loss accrues to the policyholder as
2 soon as the underlying physical damage occurs. Assuming that the property suffered
3 physical damage from a covered cause of loss while Russell still owned it, Russell had
4 accrued a claim when it sold the property to Mr. Seaman. Russell therefore had a claim
5 for loss that it could assign to Mr. Seaman.³ The court emphasizes that it makes no
6 findings of fact in resolving this motion.
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8 IV. CONCLUSION

9 For the foregoing reasons, the court DENIES State Farm's motion for summary
10 judgment (Dkt. # 11), and GRANTS Mr. Seaman's motion for partial summary
11 judgment (Dkt. # 17).

12 Dated this 28th day of June, 2007
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15 JAMES L. ROBART
16 United States District Judge
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26 ³State Farm does not dispute in this motion that if Russell suffered a covered loss under
27 the Policy before it conveyed the property, Russell could assign its *claim* to Mr. Seaman. See
28 Def.'s Mot. at 7 (noting that although "Russell had no ability to assign the insurance contract
itself," to Mr. Seaman, Russell "could assign . . . any right it had to collect benefits to which it
was entitled . . .").

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ORDER – 7